

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WEYERHAEUSER COMPANY,

Plaintiff,

v.

FIREMAN'S FUND INSURANCE COMPANY,

Defendant

and

FIREMAN'S FUND INSURANCE COMPANY,

Third-Party Plaintiff,

v.

GENERAL INSURANCE COMPANY OF  
AMERICA; NORTHWESTERN NATIONAL  
INSURANCE COMPANY OF MILWAUKEE,  
WISCONSIN, and OLD REPUBLIC  
INSURANCE COMPANY,

Third-Party Defendants.

No. C06-1189MJP

ORDER DENYING MOTION FOR  
RECONSIDERATION

This matter comes before the Court on Fireman's Fund's motion for reconsideration. (Dkt. No. 123.) Fireman's Fund asks the Court to reconsider its December 17, 2007, order granting Weyerhaeuser's Motion for Partial Summary Judgment Regarding Allocation to Fronting Policies and denying Fireman's Fund's Cross Motion for Partial Summary Judgment Regarding Insurance Policies

1 Issued by Third Party Defendants. (See Dkt. No. 118.) On January 10, 2008, the Court called for a  
2 response to the motion for reconsideration. (Dkt. No. 127.) Weyerhaeuser has filed a brief in  
3 opposition (Dkt. No. 133), as have General Insurance and Northwestern National (Dkt. Nos. 134 &  
4 136). Fireman's Fund filed a reply. (Dkt. No. 138.) Having considered these briefs and the record  
5 herein, the Court DENIES the motion for reconsideration.

6 In this district, motions for reconsideration are disfavored. The Court will ordinarily deny  
7 such motions in the absence of a showing of manifest error in the prior ruling or a showing of new  
8 facts or legal authority which could not have been brought to its attention earlier with reasonable  
9 diligence. Local Civil Rule 7(h).

10 In the Court's December 17 order, the Court found that Weyerhaeuser had entered into "side  
11 agreements" and unique deductible arrangements with some of its insurers (the third party  
12 defendants) that left Weyerhaeuser effectively uninsured from 1978-89. The court concluded that the  
13 side agreements and deductible arrangements rendered the insurance policies "fronting policies" and  
14 that Fireman's Fund could not seek contribution from any of the third party defendant insurers  
15 because Washington law prohibits allocation between a regular insurer and fronting policy insurer.

16 Fireman's Fund argues that the policies issued by the third party defendant insurers General  
17 Insurance and Northwestern National are not "fronting policies" because "there are distinct times  
18 within the General Insurance and Northwestern National policy periods when side agreements were  
19 not in effect and matching deductibles were not in place."<sup>1</sup> (Def's Mot. at 1.) Fireman's Fund argues  
20 that because the "side agreements" to the General Insurance and Northwestern National insurance  
21 policies were executed after the commencement date of the respective policies, there is a window of  
22 time — between the policy commencement date and the side agreement execution date — for which  
23 Weyerhaeuser was actually insured.

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26 <sup>1</sup> Fireman's Fund does not contest that third party defendant insurer Old Republic issued  
a policy that meets the Court's definition of fronting policy. The Old Republic agreements are not at  
issue in this motion.

1 The General Insurance (“Safeco”) policies provided \$1,000,000 per occurrence bodily injury  
 2 and property damage coverage from January 1, 1978 though January 1, 1985. (Dkt. No. 73,  
 3 McDougall Decl., Ex. A.) The Safeco “side agreement” was executed on May 11, 1978, and states in  
 4 relevant part:

5 Article III  
 6 Recitals and Background Information

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8 Section 3.04. Weyerhaeuser desires to act as a self-insurer in all states, but does  
 9 not desire to meet the conditions which it would be required to fill in order to qualify  
 10 as such. Therefore, Weyerhaeuser has requested SAFECO to issue its policy of  
 11 insurance providing bodily injury liability and property damage liability coverages, for  
 12 both motor vehicle and non-motor vehicle activities, in the form and containing the  
 terms required by the various states regulatory bodies and to file such certificates of  
 insurance and related documents as are appropriate in order to enable Weyerhaeuser to  
 obtain and retain a permit to operate its motor vehicles on the public highways and to  
 engage in such other activities as are pertinent to its business operations.

13 Article IV  
 14 Liability Insurance; Indemnification

15 Section 4.01. SAFECO agrees to issue its policy of insurance providing bodily  
 16 injury liability and property damages liability coverages for both motor vehicle and non-  
 motor vehicle activities . . . . The premium for each policy shall be THIRTEEN  
 THOUSAND FIVE HUNDRED Dollars per year.

17 Section 4.02. SAFECO hereby waives all provisions of any policy to be issued  
 18 by it for Weyerhaeuser Company and various named insureds thereunder pursuant to  
 19 this agreement which are inconsistent with the intent or terms of this agreement —  
 20 such, for example, as the conditions requiring Weyerhaeuser to notify SAFECO of  
 21 accidents. Weyerhaeuser and SAFECO agree that the adjustment, payment and defense  
 of claims against Weyerhaeuser arising out of an occurrence covered by the policy, shall  
 be the sole responsibility of Weyerhaeuser, and that SAFECO shall not incur any  
 expense therefor chargeable to or reimbursable by Weyerhaeuser unless and until an  
 action be brought against SAFECO asserting a liability arising out of or because of the  
 issuance of the policy herein provided for.

22 Section 4.03. Weyerhaeuser agrees to indemnify and hold harmless SAFECO  
 23 from all loss, cost and expense . . . sustained or incurred by SAFECO by reason of the  
 24 execution and continuance in force of said insurance policy or any extension or renewal  
thereof . . . .

25 (Dkt. No. 73, McDougall Decl., Ex. D) (emphasis added).  
 26

1 The Northwestern National policy (Policy No. CLA 255740) provided \$1,000,000 in bodily  
2 injury and property damage coverage from January 1, 1985 to January 1, 1986. (Id., Ex. B.) On  
3 February 1, 1985, Weyerhaeuser signed a “Hold Harmless Agreement” that stated, in relevant part:

4 In consideration of Northwestern National Insurance Company of Milwaukee,  
5 Wisconsin issuing policies numbered CLA 25-57-40, CLA 25-57-42 and CLA 25-57-43  
6 effective 1-1-85 and any subsequent renewal policies issued to Weyerhaeuser Company,  
7 Weyerhaeuser Company hereby agrees that no losses will be reported under these  
8 policies. If a loss should be reported, Weyerhaeuser Company agrees to indemnify and  
9 reimburse the Northwestern National Insurance Company for any and all losses and/or  
10 expenses paid on account of such loss.

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12 If is further agreed that in consideration of the fact that the Northwestern National  
13 Insurance Company will, from time to time, be required to file certificates of Insurance  
14 with various regulatory authorities certifying coverage under the above policies and  
15 renewals thereof, Weyerhaeuser Company agrees to indemnify and reimburse the  
16 Northwestern National [sic] for any and all losses and/or expenses incurred by virtue  
17 of these certificates.

18 (Id., Ex. E) (emphasis added).

19 Both of these agreements make clear that, throughout their respective policy periods, Safeco  
20 and Northwestern National were not insuring Weyerhaeuser in the traditional sense. In terms of the  
21 Safeco policy, Weyerhaeuser agreed that it would be solely responsible for “the adjustment, payment  
22 and defense of claims against Weyerhaeuser arising out of an occurrence covered by the policy.”  
23 (Emphasis added.) Likewise, in terms of the Northwestern National policy, Weyerhaeuser agreed not  
24 to report any losses under the CLA 25-57-40 policy and agreed to reimburse and indemnify  
25 Northwestern National for any and all losses and/or expenses paid on account of such loss. Thus,  
26 Weyerhaeuser agreed to defend and pay for all claims covered by both policies. The purpose of these  
agreements is also clear — Weyerhaeuser desired to self-insure but needed the insurance policies to  
satisfy regulatory authorities. Nothing in the agreements suggests that the fronting period was limited  
to the period of time after the execution of the side agreements. To the contrary, the only reasonable  
interpretation of the language and stated purposes is that Weyerhaeuser intended to self-insure for the  
entirety of the underlying insurance policy periods.

1 Therefore, the Court did not manifestly err when it concluded in its original order that “the  
2 side agreements appear to be effective for the entirety of the policy period.” (Order at 3 n.1.) The  
3 motion for reconsideration is DENIED.<sup>2</sup>

4 The Clerk is directed to send copies of this order to all counsel of record.

5 Dated this 8<sup>th</sup> day of February, 2008.

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7 Marsha J. Pechman  
8 United States District Judge  
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26 <sup>2</sup> Because the Court rejects Fireman’s Fund’s argument on the merits, the Court need not  
decide whether Fireman’s Fund waived this argument by not raising it in its summary judgment briefing.